

## 1. **PARTIES**

The Montana Department of Corrections (DEPARTMENT) and **Billings Clinic** (CONTRACTOR) enter into this Contract (**09-016-PHYCF**). The parties' names, addresses, and telephone numbers are as follows:

Montana Department of Corrections  
Youth Services Division  
1539 11<sup>th</sup> Avenue  
PO Box 201301  
Helena, MT 59620-1301  
(406) 444-3930

*Billings Clinic  
PO Box 37000*

*Billings MT 59107  
(406) 657-4000*

**DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:**

**This Contract shall replace and supersede in their entirety the parties' existing contract numbers 04-041-PHYCF [for psychiatric services] and 04-043-PHYCF [for medical services] and all amendments thereto, which shall be of no further force or effect. This Contract shall be effective upon receipt of final contract signature and in accordance with the effective time of performance specified herein.**

## 2. **DUTIES/RESPONSIBILITIES OF THE CONTRACTOR**

CONTRACTOR agrees to provide Pine Hills Youth Correctional Facility (PHYCF), located in Miles City, Montana, with the following Services:

A. A licensed psychiatrist to:

- i. monitor psychotropic medication given to youth housed at PHYCF and provide PHYCF staff with general psychiatric consultation regarding youth. Services shall be provided two (2) consecutive days of on-site services at PHYCF every four weeks and one (1) day of service through interactive video every four weeks. The specific schedule shall be determined by mutual agreement and all services shall be provided four (4) to five (5) hours per day.
- ii. provide psychiatric consultation access [via telephone] twenty-four (24) hours a day, 365 days per year.

- B. A licensed physician (M.D.) from CONTRACTOR'S Miles City Health Clinic, to provide on-site out-patient medical evaluation/management services as deemed appropriate by CONTRACTOR to youth offenders housed at PHYCF, one (1) day per week, for not less than one (1) hour per day. The specific day of service will be scheduled with the PHYCF Nurse Supervisor. Should Physician be unable to make the scheduled on-site visit, CONTRACTOR will inform PHYCF and reschedule the visit within the same service week. If PHYCF requires an additional visit during the week, PHYCF staff will schedule the visit at CONTRACTOR'S Miles City Health Clinic, informing the Clinic of the number of youth to be seen and the nature of their medical needs. The services provided by CONTRACTOR shall also include ancillary off-site work such as dictation, record keeping, transcription, phone calls and the like.

### **3. COMPENSATION/BILLING**

- A. DEPARTMENT shall compensate CONTRACTOR for successful delivery of licensed **psychiatric services** provided **pursuant to Section 2.A.** in the following manner:
  - i. DEPARTMENT shall pay CONTRACTOR **\$1,135.00 per service day, not to exceed forty-four thousand, two hundred sixty-five and 00/100 Dollars (\$44,265.00) per Fiscal Year** for the services described in **Section 2.A.** above.
- B. DEPARTMENT shall compensate CONTRACTOR for successful delivery of **licensed physician/medical services** provided **pursuant to Section 2.B.** in the following manner:
  - i. DEPARTMENT shall pay CONTRACTOR **\$187.50 per hour** during an on-site service day, not to exceed two (2) hours of service. Additional time [on-site] over the initial two (2) hours will be billed at \$100.00 per hour. The total cost annually for the services described in **Section 2.B.** above **shall not exceed twenty-four thousand, seven hundred dollars (\$24,700.00) per Fiscal Year.**
- C. DEPARTMENT agrees to pay CONTRACTOR within 30 days following receipt of a correct invoice.
- D. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.
- E. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

### **4. AGENCY ASSISTANCE**

To the extent possible, CONTRACTOR shall use its own facilities and equipment in providing the services set forth in Section 2. However, the parties recognize that services provided to DEPARTMENT may occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and telephone service (e.g., MDOC Correctional facilities do not allow wireless phones within their facility).

### **5. TIME OF PERFORMANCE**

The initial term of this Contract shall be one (1) year, commencing on receipt of final contract signature. After the one (1) year initial term, this Contract shall automatically renew for successive terms of one (1) year each, unless written notice of termination is given at least thirty (30) days prior to the end of the then current term.

### **6. LIAISONS AND NOTICE**

- A. Jim Hunter (406-233-2290), 4 N. Haynes Avenue, Miles City MT 59301, or successor serves as DEPARTMENT'S liaison.
- B. Lyle M. Seavy (406-657-4000), 2800 10<sup>th</sup> Avenue North, Billings MT 59101, or successor serves as CONTRACTOR'S liaison **for the psychiatric services** provided pursuant to Section 2.A. herein.

- C. Linda R. Olsen (406-657-4000), 2800 10<sup>th</sup> Avenue North, Billings MT 59101, or successor serves as CONTRACTOR'S liaison for the medical services provided pursuant to Section 2.B. herein.
- D. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A), and (B) or (C) above, mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

**7. OWNERSHIP AND PUBLICATION OF MATERIALS**

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the sole property of DEPARTMENT.

**8. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Neither CONTRACTOR nor its employees are employees of the State. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. CONTRACTOR shall provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the contract. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Contracts Management Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

**9. HOLD HARMLESS AND INDEMNIFICATION**

The CONTRACTOR shall protect, defend, and save the DEPARTMENT, its elected and appointed officials, agents, and employees, harmless from and against all claims, liabilities, demands, causes of action, and judgments, including the cost of defense thereof, arising in favor of or asserted by third parties on account of damage to property, personal injury, or death arising, in whole or in part, from the negligent acts or omissions or willful misconduct in the performance of services under this Contract by the CONTRACTOR, its officers, agents, employees, representatives, assigns, or subcontractors.

The DEPARTMENT shall protect, defend, and save the CONTRACTOR, its officers, agents, employees, representatives, assigns and subcontractors, harmless from and against all claims, liabilities, demands, causes of action, and judgments, including the cost of defense thereof, arising in favor of or asserted by third parties on account of damage to property, personal injury, or death arising solely from the negligent acts or omissions or willful misconduct in the performance of services under this Contract by the DEPARTMENT, its agents, employees, representatives, assigns, or subcontractors.

**10. INSURANCE**

- A. **General Requirements:** CONTRACTOR shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by CONTRACTOR, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**Primary Insurance:** CONTRACTOR'S insurance coverage shall be primary insurance as respect to the State of Montana, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State of Montana, its officers, officials, employees or volunteers shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

**Deductibles and Self-Insured Retentions:** Any deductible or self-insured retention must be declared to and approved by DEPARTMENT. At the request of DEPARTMENT either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, and volunteers; or (2) CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**Certificate of Insurance/Endorsements:** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages must be received by the Contracts Manager, PO Box 201301, Helena, MT 59620-1301 prior to start of work under this Contract. CONTRACTOR must immediately notify DEPARTMENT of any material change in insurance coverage, such as changes in limits, coverages, policy status, etc. DEPARTMENT reserves the right to require complete copies of insurance policies at all times.

- B. **Specific Requirements for Commercial General Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

**Additional Insured Status:** The State of Montana, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations; premises owned, leased, occupied, or used.

- C. **Specific Requirements for Professional Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, CONTRACTOR may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

## 11. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

**12. PUBLIC INFORMATION**

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a “trade secret” as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

**13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

**14. AMENDMENTS**

All amendments to this Contract shall be in writing and signed by the parties.

**15. COMPLIANCE WITH LAWS**

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

**16. TERMINATION AND DEFAULT**

- A. Either party may terminate this Contract with or without cause by providing written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party’s pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.
- B. DEPARTMENT, at its sole discretion, may, without 30 days notice, terminate or reduce the scope of this Contract if available funding is reduced for any reason. In such event, DEPARTMENT shall remain obligated to pay for all services provided by CONTRACTOR.
- C. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

**17. CHOICE OF LAW AND VENUE**

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

**18. LICENSURE**

CONTRACTOR agrees to provide copies of current licenses and certifications that register CONTRACTOR and any associates performing under this Contract.

**19. INTEGRATION**

This Contract contains the entire agreement between the parties concerning the subject matter hereof and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

**20. SEVERABILITY**

A declaration by any court, or any other binding legal source, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

**21. COMPLETED CONTRACT**

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Contracts Management Bureau, PO Box 201301, 1539 11<sup>th</sup> Avenue, Helena, MT 59620-1301.

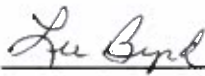
**SIGNATURE**

**DEPARTMENT**

  
\_\_\_\_\_  
Steve Gibson, Administrator  
Youth Services Division

9-29-08  
\_\_\_\_\_  
Date

**CONTRACTOR**

  
\_\_\_\_\_  
Lu Byrd, Vice President  
Hospital Operations  
Billings Clinic

10/21/08  
\_\_\_\_\_  
Date

**Approved As to Form:** 

Approved for Legal Content by:

  
\_\_\_\_\_  
Legal Counsel  
Department of Corrections

9/16/08  
\_\_\_\_\_  
Date